

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

NICHOLAS VARELA,

Plaintiff,

V.

CENTRAL MUTUAL INSURANCE
COMPANY,

Defendant.

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Case No. 6:23-cv-148-JDK

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Defendant Central Mutual Insurance Company removed this case to federal court on March 25, 2023. On April 1, 2023, Defendant moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Docket No. 3. Thereafter, Plaintiff Nicolas Varela filed an amended complaint in federal court, again asserting claims for breach of contract, noncompliance with the Texas Insurance Code, breach of the duty of good faith and fair dealing, violation of the Texas Deceptive Trade Practices Act, and common law fraud against Defendant. Docket No. 4. Defendant then moved to dismiss the first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Docket No. 5.

The Court referred Defendant's motions to dismiss to United States Magistrate Judge John D. Love for proposed findings of fact and recommendation for disposition. Docket No. 7. On June 23, 2023, Judge Love issued a Report recommending that the Court deny Defendant's motions to dismiss (Docket Nos. 3, 5) as moot and accept

Plaintiff's second amended complaint (Docket No. 6-1) as the live pleading in this matter. No objections to the Report were filed and the time period for filing objections has passed. Defendant has since filed an answer to the second amended complaint. Docket No. 9.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no objections were filed in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 8) as the findings of this Court. The Court **DENIES** Defendant's motions to dismiss (Docket Nos. 3, 5) as moot. Plaintiff's

second amended complaint (Docket No. 6-1) is accepted as the live pleading in this matter.

So **ORDERED** and **SIGNED** this **11th** day of **July, 2023**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE